

IN THE SENATE OF THE UNITED STATES.

MAY 17, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 374.]

The Committee on Claims, to whom was referred the case of George J. Knight, has looked into the same, and referring to reports heretofore made to the Senate and House of Representatives, in favor of the petitioner, which they adopt, the committee report a bill for the relief of the petitioner for the sum of fifteen hundred dollars.

IN THE HOUSE OF REPRESENTATIVES, December 23, 1831.

The Committee on Naval Affairs, to whom was referred the petition of George J. Knight, make the following report :

The petitioner, previous to the month of May, 1814, was the owner of a schooner called the "Experiment," engaged in trade in the Chesapeake bay and its tributary waters, under the command of Captain George McDuell. He alleges that he gave strict orders to his captain not to do anything which would expose his vessel to capture by the British forces, which then infested the waters of the Chesapeake, nor to engage in any improper trade ; that, while said vessel was proceeding on her voyage down the river Potomac, she was stopped by the commander of a small vessel-of-war of the United States, and taken into the public service as a look-out vessel ; that said vessel was despatched by the commander of the United States vessel-of-war down the river Potomac to look out for British ships-of-war, which were said to be in that river ; that, upon turning a point in the river, she suddenly came in view of a squadron of British ships ; that the captain of said schooner endeavored to make his escape by running into Yeocomico creek, but, in doing so, the vessel grounded, and was next morning captured by the enemy's barges and burned ; and the petitioner claims compensation for the vessel so captured and destroyed. At the time of these transactions the petitioner resided in the city of Baltimore, in the State of Maryland, and was engaged in mercantile transactions ; but that, owing to this and many other heavy losses in trade, he was compelled to relinquish his business, and removed to the western part of the State of New York, and assumed the occupation of a farmer. That, at the time of the destruction of his vessel, a

protest, setting forth all the circumstances of the case, was made by Captain McDuell; her commander, which, together with other depositions and documents in the case, were wholly and utterly destroyed, by the burning of his dwelling-house on the 10th of February, 1830. The fact of the burning of the petitioner's dwelling is fully substantiated by a large number of his neighbors.

It appears, from documents with which the committee have been furnished by the Navy Department, that the United States schooner "Asp," under the command of Midshipman Richard Mackall, was despatched from the navy yard in Washington on the 13th of April, 1814, to Baltimore, with cannon, and a raft of mast pieces in tow, intended for the United States frigate *Java*, then building in Baltimore; that, after the departure of the "Asp" from Washington, the Navy Department was informed that a British squadron was lying off the mouth of the Potomac, and that orders were thereupon forwarded to stop her further progress. On the 29th of April, the commander of the Asp, in a letter dated "Ludlow's Landing," informed Commodore Tingey that he had obtained certain intelligence that the enemy's squadron was at anchor a small distance below Blackstone's island, in the Potomac, and that, for safety of the raft, &c., he should move further up the river.

It appears from the depositions of Captain McDuell, who now resides in the city of Washington, taken March 29, and April 8, 1830, that, while the Asp was thus lying in the Potomac, arrested in her voyage and beleaguered by the enemy, the vessel of the petitioner, pursuing a voyage from Alexandria, in the District of Columbia, to St. Mary's, on the Potomac, was hailed by the Asp, and informed that the enemy were in the Potomac below; upon which the "Experiment" cast anchor alongside the Asp, the commander of which stated that, as his vessel was not a swift sailer, and being encumbered with a raft in tow, the preservation of which was of much consequence, he was desirous of engaging a fast sailing vessel, such as the Experiment, as a look-out vessel, to proceed down the river and reconnoitre the enemy; that he, (Captain McDuell,) having other people's property on board, and positive orders from his owners not to risk or endanger his vessel, declined the service. Upon which, the commander of the Asp informed him that he was authorized to employ a vessel to look out, if he found it necessary to do so, and thereupon positively *ordered* him to proceed down the river to reconnoitre; that he then considered he had no further discretion in the case, as he considered, in fact, his vessel and himself *impressed* into the public service, by a force which he had not the ability, if the inclination, to oppose; that he did proceed on the service assigned him, and went cautiously down the river as far as Piney Point, keeping as near the shore as possible. On opening the point, in the dusk of the evening, he suddenly discovered the enemy's squadron, and was completely within their power; that, not being able to return, the wind blowing down the river, he ran across the river and endeavored to gain Yeocomico creek, in doing which he grounded; and that every exertion to get the vessel off proved fruitless. She was captured next morning by the enemy's barges, who also fruitlessly endeavored to get off, after which she was fired and

destroyed. Captain McDuell also states that no consideration would have induced him to have ventured his vessel in the service had he not believed that he was bound to do so by the orders of the officer of the government, being, as he conceived, legally impressed into the public service, and that he could have reached his place of destination in safety. He further states that, shortly after the capture and destruction of the experiment, he entered a protest before the collector of the port of Yeocomico, which he sent to his owners in Baltimore.

It may be proper here to observe that the respectability of the character of Captain McDuell is amply vouched by many highly honorable gentlemen of the city of Washington.

G. Robinson, of Westmoreland county, Virginia, states that he was on the shore when Captain McDuell landed from his schooner, who then made the same representations with respect to his being impressed into the public service as are set forth in his deposition, which Mr. Robinson states he has examined.

John Murphy, the presiding justice of Westmoreland county court, states that he recollects the circumstances of the vessel's being on shore, captured and destroyed; that a company of United States troops and a company of militia, stationed in the neighborhood, went to her defence; that he has seen Captain McDuell's statement, and that he has not the least doubt it is perfectly correct.

Captain Allen S. Dozier states that he was in command of a company of militia stationed a little above the mouth of Yeocomico creek; saw the schooner on shore; that Captain McDuell called upon him for assistance to get her off; that part of his company went on board, used all the means in their power, during the night, but without success; that she was captured next morning and destroyed; and that, to the best of his recollection, Captain McDuell made a formal protest before the collector of Yeocomico, which was also signed by his lieutenant and himself, setting forth all the circumstances of the case.

Captain William L. Rogers states that he commanded a company of the United States troops stationed about two miles above the place where the vessel was destroyed; that, upon discovering she was aground, he went to her relief; that a large armed barge, under cover of a heavy armed schooner, was approaching; that all was done in her defence with musketry which time and circumstances permitted; and that during the conflict Captain McDuell behaved with firmness, and manifested a determination to defend his vessel to the last. Captain Rogers also states that after the vessel was abandoned by the enemy he boarded her with a view to extinguish the fire, but that all endeavors to do so were fruitless; that the vessel appeared to be from eighty to a hundred tons burden, in good condition, worth from two to three thousand dollars.

The Hon. John Taliaferro, of the House of Representatives, certifies, in writing, to the high standing and respectability of the characters of Mr. Robinson, Mr. Murphy, Captain Dozier, and Captain Rogers.

From this statement of facts, which are amply sustained in the opinion of the committee, the following conclusions present themselves:

That the vessel of the petitioner was captured and destroyed by the enemy ; that such capture and destruction would not probably have taken place if the commander of the United States ship *Asp* had not interfered with the voyage of the vessel, by taking her and her commander into his service to reconnoitre the enemy, the better to protect himself and the public property under his charge.

The petitioner alleges, and Captain McDuell makes oath to the fact, that his orders were strict and positive to run no risk of capture by the enemy, nor to do anything which would be likely to endanger the safety of his vessel ; and under these orders, and from the declarations of Captain McDuell, it is fair to infer that after he was informed of the neighborhood of the enemy he would have withdrawn up the river, or taken such other precautions as would have assured the safety of the vessel. This he states he was prevented from doing by his impressment into the public service. Whether that impressment was legal or not it is not for the committee *now* to determine. It is sufficient to state that it was the common practice in the time for officers of any grade, both in the military and naval arm of the service, to impress private property into the public service, and indemnity has been made in many such cases ; and the captain alleges that, according to the received opinions and the practice of the times, he did not consider himself as having any option or discretion left after he was told by the commander of the "*Asp*" that he had *authority* to impress his vessel or any other vessel into his service, and was *ordered* to proceed in the discharge of duties appointed for him. It appears he did proceed in the discharge of those duties, and it was in their discharge that the vessel was captured and destroyed.

Although the commander of the "*Asp*" might not have had authority from his superior officers to impress the vessel of the petitioner into the public service, yet it should be recollected he was charged with a highly important service, upon the successful execution of which depended the fitting out for sea one of the frigates of the United States. It was therefore praiseworthy in him to take all measures of precaution which in his judgment would tend to the preservation of the valuable property in his charge, and for its ultimate safe arrival at the place of its destination. One of these measures was, in his opinion, to take and despatch a fast sailing vessel down the river to ascertain the fact of an enemy's neighborhood, so as to enable him to decide whether it would be safe to proceed, or best to return up the river. The measure resulted in the preservation of the public property, and in the subservience of the public interest, and in the loss of the property of the petitioner. Had Mr. Mackall, the commander of the "*Asp*," neglected to take any or *all* measures within his power to assure the safety of his important charge, it is believed he would have been justly obnoxious to censure ; and if, in doing what, under the peculiar circumstances of the case, he might have conceived to be his duty, the public interest was protected and that of the petitioner sacrificed, it is believed that a due regard for public justice requires that the damage sustained by the petitioner should be made good. With these views the committee report a bill for his relief.

IN THE SENATE, *January 13, 1837.*

The Committee of Claims, to whom was referred the petition of George J. Knight, report:

That, during the late war with Great Britain, the petitioner was the owner of a schooner called the "Experiment;" and that, while said schooner was employed on the river Potomac, she was taken into the service of the United States by *impressment*, by an officer of the navy, and while in said service was captured and destroyed by the enemy.

In May, 1832, an act was passed by Congress, directing the sum of two thousand dollars to be paid to the petitioner for the said schooner. It is alleged by the petitioner that, at the time the bill was reported in Congress, granting the two thousand dollars, there was no direct or positive testimony before the committee as to the actual value of the vessel; that, being ignorant of the forms of proceeding, or of what would be required, he had not accompanied his petition with evidence upon that point, but had supposed that his claim would be referred to some of the departments for adjustment, before which it would be proper to establish its amount, and not before Congress; that upon learning that a specific sum was contemplated to be allowed by the bill greatly below the value of his vessel, he procured testimony upon that point, which established the value of his vessel at from three thousand five hundred to four thousand dollars; that he submitted this testimony to the committee by which the bill was reported, and while it was yet pending, but was advised to suffer the bill to pass as it stood, and to leave the residue for a subsequent application. To this advice the petitioner says he submitted, and it is for the residue that the present petition is presented.

The propriety of allowing the claim for the destruction of the vessel is not now to be determined, that question having been settled affirmatively by the passage of the act of 1832. The only questions now to be determined are, first, has the petitioner received the value of his property? And, if he has not, what is that value?

From documents filed with the present petition, it appears that at the time the bill for two thousand dollars was reported the value of the vessel was not clearly or fully established. The petitioner, for the reasons above stated, not supposing that any sum would be fixed upon by the bill, did not turn his attention to that point. The only testimony concerning the value was the testimony of one witness, who stated that she was worth, probably, from two to three thousand dollars. From motives of caution the smaller sum was taken by the committee.

It appears from a certificate of Joseph Turner, L. H. Dunkin, Dorgin & Bayley, William Price & Sons, all of whom are practical ship carpenters of the city of Baltimore, that such a schooner as the petitioner's was worth from \$3,000 to \$4,000. It is certified by Captain James Chaytor, who now commands the steamboat "Carroll," on the route between Baltimore and Philadelphia, and who is an experienced shipmaster, and was a distinguished officer in the privateer service in

the war, that such a vessel as that owned by the petitioner could not, at the time she was lost, be built for less than \$4,000. The opinion of Captain Chaytor is endorsed and certified to be correct by Matthew Van Dusen, Jehu W. Eyre, Jehu Eyre, and John Vaughan, who state that they have been for several years practical shipbuilders in the city of Philadelphia. Jacob Tees, of Philadelphia, also states that he is well acquainted with the building and fitting of vessels; that such a vessel as the "Experiment" could not *now* be fitted out for less than three thousand four hundred dollars; and that at the time of her destruction such vessels were twenty per cent. higher than at present, which fixes her value at more than \$4,000. The credit to be attached to these certificates is guarantied by John N. Barker, collector, and other officers of the custom-house in Philadelphia, as well as by the honorable Michael W. Ash, member of Congress. Joel Vickers and Benjamin Buck state that during the war, and since, they have been engaged in building, buying, and fitting vessels from the port of Baltimore, and that having examined the papers relative to the schooner "Experiment," with the description given by her captain, they are of the opinion that she was worth, when destroyed, from \$3,500 to \$4,000. William Howell & Sons, on the same certificate, endorse it as their opinion that she was worth about \$3,500.

Thomas A. Lane, harbor master of the port of Baltimore, states that he has no hesitation in saying that the schooner "Experiment," as described by those who knew her, was at the time of her destruction worth from \$3,500 to \$4,000. John Randall, esq., of Baltimore, states that during the war he was, with others, associated in the business of insuring vessels sailing from the port of Baltimore; that he recollects the schooner "Experiment," belonging to George J. Knight, in December, 1813, as being one of the number, and is of opinion she was then worth from \$3,500 to \$4,000. The high standing of the above gentlemen for respectability and integrity is fully established by the honorable Samuel Smith, late a senator of the United States, and at present mayor of the city of Baltimore, and by the honorable Isaac McKim, of the House of Representatives.

From a letter dated in March, 1836, addressed by Hardiste & Hooper, shipbuilders of Baltimore, it seems that for a vessel nearly, if not exactly, such as the schooner "Experiment" is described to have been, \$4,500 is now demanded.

From all the evidence, the committee are induced to believe that the value of the petitioner's vessel, at the time of her impressment into the service of the United States, was from \$3,500 to \$4,000. Three thousand five hundred dollars is the lowest estimate which has been made by any person, and the committee believe that they are not likely to err in adopting that estimate as the value of the petitioner's property. That value the committee believe he ought to receive, it having been already decided by Congress that he is entitled to pay for his vessel, and they report a bill accordingly.



